



US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Public Notice Number: 200225155

Date: March 14, 2003

Comments Due: April 14, 2003

In reply, please refer to the Public Notice Number

The District Engineer, Sacramento District, Corps of Engineers (Corps) is evaluating a permit application from Bill and Michelle Green. The purpose of this notice is to inform interested parties of a proposed work activity and to solicit comments. This proposal is being evaluated under Section 10 of the River and Harbor Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the placement of fill or dredged material in waters of the United States. The proposed project is described below and shown on the attached drawings. This notice may also be viewed at the Corps web site at: <http://www.spk.usace.army.mil/cespk-co/regulatory/PNs/>.

Applicant: Bill and Michelle Green, 440 Golden Oak Dr, Portola Valley, California 94028

Location: The project site is approximately 6 miles south of Tahoma (Rubicon Bay area) at APN 017-041-017 in Section 4, Township 13 North, Range 17 East, El Dorado County, California in the Meeks Bay USGS Topographic Quadrangle.

Project Description: The applicant is proposing to construct a new floating pier, install four mooring buoys, and reconstruct an existing flume on the lower 160 feet of Rubicon Creek, before its confluence with Lake Tahoe. Dimensions into Lake Tahoe are relative to elevation 6229.1 feet (Lake Tahoe Datum), the ordinary high water (OHW) elevation. The new pier is proposed to be 120 feet long (plus another 12 feet located above the OHW) and 10 feet wide, supported by 6 steel piles. The floating pier will be three, 39-foot sections joined by "orca" (hinged) joints. The closest of the four buoys is proposed to be placed at the end of the pier, approximately 175 feet from the OHW with the other three buoys in a diamond-shaped pattern.

The wooden flume will be reconstructed using 6x8-inch cedar posts, spaced approximately 4 feet apart and 3/4-inch plywood along the interior vertical walls and 2x12 runner boards along the bottom of the flume. A 12-inch substrate of gravels and cobbles will be placed over the runner boards to create a new stream substrate. Seven rock vortex weirs will be placed inside the new flume to create structures that function as drop-control devices. The larger boulders used to construct the weirs will be held in place by rebar dowels secured through the bottom of the runner boards. The lower 12-foot section of the existing flume is concrete and will be removed. While the flume is being reconstructed, a temporary dam, upstream of the flume, will divert all creek flows into a pipe to be discharged into the lake, approximately 50 feet south of the creek's confluence with the lake.

The attached maps and drawings provide additional project details.

The Corps requires that applicants consider and use all reasonable and practical measures to avoid and minimize impacts. If the applicant is unable to avoid or minimize all impacts, the Corps may require compensatory mitigation. The Corps has not determined if compensatory mitigation will be required if the proposed project is authorized. However, the applicant believes that the enhancement to the flume will compensate for impacts to fish usage of Rubicon Creek. Because the pier and mooring buoys are so close to the creek's confluence with Lake Tahoe, there may be fish use and access impacts to the creek.

Purpose and Need: The project purpose is to place a new pier for private boat access; place 4 mooring buoys; and reconstruct a flume to cause it to be more fish-friendly. The applicant believes that, as lakefront owners, there is a need to have private lake access and mooring buoys to use the lake. The flume reconstruction was mandated by the Tahoe Regional Planning Agency (TRPA) as a requirement to receive the TRPA permit. This provided compliance with TRPA requirements to correct or remove fish barriers between the lake and tributary creeks. Additionally, the flume is badly in need of repair.

Background Information: The Corps does not have a record that 2 of the proposed mooring buoys were authorized by the Corps. This notice will notify the public of two existing buoys and 2 new buoys. The wooden flume was probably built around 1927 to contain the creek on the subject property. Fish access to Rubicon Creek has been limited because the confluence point with Lake Tahoe is often impassible. The D L Bliss State Park is adjacent to (south of) the applicant's parcel, near Rubicon Point.

Environmental Setting: The project site is located in a large lake straddling the Nevada-California border. Its only outlet is the Truckee River, located at the northwest portion of the lake, thus the Truckee River originates at Lake Tahoe. The Tahoe Basin is mostly in public ownership so very little development exists beyond the lakeshore area of the lake. Nearly all the land around the lake is typical Sierra Nevada / Carson Range coniferous forest. The lake is known for its clear, blue waters and sandy beaches. The lake is oligiotrophic and controlling pollutant input is a primary objective of resource agencies. It is internationally known and a major recreation destination. The lake is surrounded by private lakeshore owners who, in a cumulative sense, compromise the pristine biological nature of the lake. Rubicon Creek's drainage basin is approximately 2.7 square miles and forms from the crest of the Sierra Nevada Mountains at elevation 9269 feet to Lake Tahoe at (the low water) elevation 6223 feet. The terrain is fairly steep until the creek flows underneath Highway 89. The gradient after that is flatter through a modified channel (wooden flume) located at the lower 160 feet of creek. The first 75 feet (as measured from the upstream end) is bounded by remnant backshore lagoon marsh area (on the north side), and the area to the south has been modified by fill material. The creek likely provides spawning and rearing habitat for rainbow trout, brown trout, and (possibly) mountain whitefish.

Additional Information: Additional information may be obtained by calling applicant's consultant, Auerbach Engineering Corporation, at 530-581-1116 x29 in Tahoe City, California or by calling Richard Gebhart, Project Manager, Corps of Engineers at 775-784-5304 in Reno, Nevada. Participation is encouraged so that the District Engineer is better able to complete a more thorough public interest review. Comments assist the Corps to make a reasonable decision based on public interest factors. The District Engineer is particularly interested in receiving comments related to the proposals probable impacts on the affected aquatic systems functional values and the cumulative and secondary effects.

Public Hearing: Before the expiration date of this notice, anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state the reason(s) for holding a public hearing. If the District Engineer determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location.

Submitting Comments: Comments must be received on or before the expiration date (located on top of the first page) to be considered in subsequent actions on this application. When submitting comments, please reference the Corps Number 200225155. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. Anyone whose interests may be affected by the proposed work is invited to submit favorable or unfavorable written comments to:

US Army Corps of Engineers
ATTN: CESPK-CO-R (Richard Gebhart)
300 Booth St, Rm 2103
Reno, Nevada 89509-1361
Email: Richard.A.Gebhart@usace.army.mil

Water Quality Certification: A permit for the described work in Rubicon Creek will not be issued until water quality certification, as required under Section 401 of the Clean Water Act, has been granted or is waived from the California Regional Water Quality Board-Lahontan (the pier and buoys are regulated under Section 10 and do not require water quality certification). Waiver will be deemed to occur if the state fails or refuses to act on the request for certification within 60 days.

Section 404(b)(1) Evaluation: The activity's impact for the described work in Rubicon Creek on the public interest will include application of the 404 (b) (1) guidelines promulgated by the Administrator, Environmental Protection Agency.

Endangered Species: Preliminary review, under the Endangered Species Act of 1973 (87 Stat. 844), indicates that the described activity will not affect listed endangered species or their critical habitat. Formal consultation under Section 7 of the Act is not required for the described activity. It is noted that Tahoe yellow cress, *Roripa subumbellata*, a federal candidate species for listing and a state endangered species, is located on the property near the flume. Protective construction fences will be placed around the two plant locations to preclude disturbance. Long term protection includes do not disturb signage and planting willows (lemmon willow, *Salix lemmonii*, and shining willow, *Salix lucida lasiandra*) in a concentric circle around the yellow cress sites.

Cultural Resources: In accordance with Section 106 of the National Historic Preservation Act, initial review of cultural resources information available in the National Register of Historic Places and its current supplements indicates that no historic properties would be affected by the proposed activity. This notice was sent to the State Historic Preservation Office.

Evaluation: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the described activity

must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the described activity will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Additional Requirements: State law requires that leases, easements, or permits be obtained for certain works or activity in the described waters. These state requirements must be met, where applicable, and a Department of the Army permit must be obtained before any work within the applicable statutory authority, previously indicated, may be accomplished. Other local governmental agencies may also have ordinances or requirements which must be satisfied before the work is accomplished. A TRPA permit has been obtained and the applicant is in the process of obtaining approval from the California Fish and Game and the California State Lands Commission.

Michael J. Conrad, Jr.
Colonel, US Army
District Engineer

Attachments